



The Federal Election Commission
Washington, DC 20463

NOV - 3 2008

William C. Oldaker, Esq.
N. Bradley Litchfield, Esq.
Oldaker, Biden & Belair, LLP
818 Connecticut Avenue, NW
Suite 1100
Washington, DC 20006

RE: MUR 5517
Jim Stork for Congress, *et al.*

Dear Sirs:

On October 21, 2008, the Federal Election Commission accepted the signed conciliation agreement submitted on your clients' behalf in settlement of violations of 2 U.S.C. §§ 434(a) and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondents and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the date of this letter. If you have any questions, please contact me at (202) 694-1598.

Sincerely,


Ruth Heilizer
Attorney

Enclosure
Conciliation Agreement

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)

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4
5 James R. Stork)

6 Stork Investments, Inc. d/b/a)

MUR 5517

7 "Stork's Bakery")

8 Stork's Las Olas, Inc.)

9 Jim Stork for Congress and William C.)

10 Oldaker, in his official capacity as treasurer)

11
12 **CONCILIATION AGREEMENT**

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15 This matter was initiated by a signed, sworn, and notarized complaint by Shari L.

16 McCartney. An investigation was conducted, and the Federal Election Commission

17 ("Commission") found probable cause to believe that James R. Stork, Stork Investments, Inc.

18 d/b/a "Stork's Bakery," Stork's Las Olas, Inc., and Jim Stork for Congress and William C.

19 Oldaker, in his official capacity as treasurer (collectively, "Respondents"), violated 2 U.S.C.

20 § 441b(a) and that Jim Stork for Congress and William C. Oldaker, in his official capacity as

21 treasurer, also violated 2 U.S.C. § 434(b).

22 NOW, THEREFORE, the Commission and the Respondents, having duly entered into
23 conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

24 I. The Commission has jurisdiction over Respondents and the subject matter of this
25 proceeding.

26 II. Respondents have had a reasonable opportunity to demonstrate that no action
27 should be taken in this matter.

28 III. Respondents enter voluntarily into this agreement with the Commission.

29 IV. The pertinent facts in this matter are as follows:

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Parties

1. Stork Investments, Inc. d/b/a "Stork's Bakery," and Stork's Las Olas (the "Stork Bakeries"), which are incorporated in Florida, are located in Wilton Manors, Florida and Fort Lauderdale, Florida, respectively.

2. James R. Stork is the president and owner of the Stork Bakeries and was a 2004 candidate for Congress in Florida's 22nd Congressional District.

3. Jim Stork for Congress ("the Committee") is the principal campaign committee of James R. Stork, and William C. Oldaker is the Committee's treasurer.

Coordinated Communications

4. Under the Federal Election Campaign Act of 1971 ("the Act"), as amended, corporations may not make contributions in connection with a federal election and corporate officers may not consent to such contributions. 2 U.S.C. § 441b(a). Moreover, federal candidates and political committees may not knowingly accept or receive such contributions. *Id.* A contribution includes a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a federal election. 2 U.S.C. § 431(8)(A)(i). The term "anything of value" includes in-kind contributions. 11 C.F.R. § 100.52(d)(1). Each report filed by a political committee shall disclose the information specified in 2 U.S.C. § 434(b).

5. The Act defines in-kind contributions as, *inter alia*, expenditures made by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents." 2 U.S.C. § 441a(a)(7)(B)(i). Under 11 C.F.R. § 109.21, a communication is coordinated if it: (1) is paid for by a person other than the candidate or candidate's committee; (2) satisfies one or more of the four

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1 content standards set forth at 11 C.F.R. § 109.21(c); and (3) satisfies one or more of the six
2 conduct standards set forth at 11 C.F.R. § 109.21(d).

3 6. At the time relevant to this matter, a communication satisfied the “content”
4 standard if it was, *inter alia*, a public communication that (i) referred to a clearly identified
5 candidate for Federal office, (ii) was disseminated within 120 days before an election, and
6 (iii) was directed to voters in the jurisdiction of the clearly identified candidate. 11 C.F.R.
7 § 109.21(c)(4) (2004).

8 7. An advertisement is a “public communication” if it is distributed “by means of any
9 broadcast, cable, or satellite communication,” or if it is disseminated “by means of any . . .
10 mass mailing.” 11 C.F.R. § 100.26. “Mass mailing . . . means a mailing of more than 500
11 pieces of mail of an identical or substantially similar nature within any 30-day period.”
12 11 C.F.R. § 100.27.

13 8. The definition of “clearly identified candidate” includes, *inter alia*, the name or
14 photograph of the candidate. 11 C.F.R. § 100.17.

15 9. Communications that meet the conduct standard of section 109.21(d) include, *inter*
16 *alia*, those with which the candidate is “materially involved” in decisions regarding their
17 content; intended audience; means or mode; specific media outlets; timing or frequency; the
18 size or prominence of a printed communication; or duration of communications by means of
19 broadcast, cable, or satellite. 11 C.F.R. § 109.21(d). *See also* Advisory Opinion 2003-25
20 (Weinzapfel) (appearance of a U.S. Senator in an advertisement endorsing a mayoral
21 candidate showed sufficient involvement by the Senator to satisfy the “materially involved”
22 conduct standard).

1 10. Two cable television advertisements, paid for by the Stork bakeries, ran from June
2 29, 2004 through July 18, 2004 in portions of Florida's 22nd Congressional District, including
3 the markets of Fort Lauderdale, Pompano Beach, Boca Raton, and Delray Beach. Each
4 advertisement included the name and an image of the candidate. In each advertisement, the
5 candidate stated, "I'm Jim Stork. Come find out why Stork's Bakery and Café means quality
6 you can trust." None of the advertisements stated that Mr. Stork was a candidate and made no
7 reference to any election. The advertisements featured the products available at the Bakery
8 and Café with background images of customers seated at tables or standing within the Bakery
9 and Café premises.

10 11. The television advertisements satisfy the payment standard of section 109.21
11 because the Stork bakeries paid for them (persons other than the candidate or candidate's
12 committee); satisfy the content standard of section 109.21 because they were distributed by
13 cable, clearly identified the candidate by image and name, ran within 120 days before the
14 August 31, 2004 Florida primary and were broadcast within Florida's 22nd Congressional
15 District; and satisfy the conduct standard of section 109.21 because the candidate appeared in
16 the advertisements and was otherwise materially involved with them. The voting ballot for
17 the August 31 primary in the 22nd Congressional District of Florida did not contain Mr.
18 Stork's name, nor the name of any other person for the office of Representative in Congress,
19 because he was unopposed for the nomination of his political party.

20 12. In addition to the cable television advertisements, the Stork bakeries paid for
21 approximately 25,500 pieces of direct mail, including coupons, from approximately June 21,
22 2004 through the end of July 2004. These mailings, which were disseminated within
23 Florida's 22nd Congressional District and which advertised the Stork bakeries, included

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1 photographs of Mr. Stork under which his name was printed. The mailings included location
2 and business hours information, promoted bakery products, and offered discounts or prizes to
3 customers who made purchases at the Stork bakeries.

4 13. The direct mailings satisfy the payment standard of section 109.21 because the
5 Stork bakeries paid for them; satisfy the content standard because they were "mass mailings,"
6 as defined in 11 C.F.R. § 100.27, clearly identified the candidate by name and photograph,
7 were disseminated within 120 days before the August 31, 2004 Florida primary, and were
8 distributed within Florida's 22nd Congressional District, and satisfy the conduct standard of
9 section 109.21 because the candidate was materially involved with them.

10 14. The Stork bakeries spent a total of \$111,791 for their cable television and direct
11 mail advertising featuring the candidate.

12 **Failure to Report and Misreporting of Candidate Advances**

13 15. A candidate may make unlimited expenditures from personal funds, including
14 unlimited contributions to his or her campaign. 11 C.F.R. § 110.10; *see* Advisory Opinions
15 2003-31 and 1997-10. A candidate is an agent of his or her primary campaign committee
16 when making disbursements in connection with his or her campaign. 2 U.S.C. § 432(e)(2).
17 Debts and obligations owed by a political committee must be initially disclosed in a timely
18 manner and must be continuously reported until extinguished. 2 U.S.C. § 434(b)(8);
19 11 C.F.R. §§ 104.11 and 116.5(c).

20 16. A payment by a candidate from personal funds is a contribution or an expenditure
21 unless one of two exceptions applies. First, any campaign-related transportation expense, or
22 any usual and normal subsistence expense incurred while traveling on behalf of a campaign,
23 that is paid for by an individual on behalf of a candidate and that does not exceed \$1,000 in

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1 aggregate for a single election and is not reimbursed by a campaign, is neither a contribution
2 nor an expenditure. 2 U.S.C. § 431(8)(B)(iv); 11 C.F.R. §§ 100.79 and 100.139. Second, any
3 reimbursed campaign-related transportation or transportation-related subsistence expense paid
4 by a candidate is not a contribution if it is reimbursed by his or her campaign committee
5 within 30 days from the date the expense was incurred, or if payment was made with a
6 personal credit card, within 60 days after the closing date of the billing statement on which the
7 expense first appears. 11 C.F.R. § 116.5(b).

8 17. A transportation-related advance that is not reimbursed within the time limit nor
9 within the same reporting period, as well any non-travel advances, whether reimbursed in the
10 same or a different reporting period, are considered to be in-kind contributions. The
11 committee must report such advances as in-kind contributions in memo entries on Schedule A
12 when the candidate's payments exceed \$200 in aggregate for the election cycle, and
13 reimbursement does not bring the amount below \$200 before the end of the reporting period.
14 11 C.F.R. §§ 104.3(a)(4)(i) and 104.13(a)(1). Reimbursements must be reported as operating
15 expenditures and, if reimbursements to the candidate exceed \$200 in an election cycle, the
16 committee must itemize the disbursements on Schedule B, noting the memo entries to which
17 they relate. In addition, with respect to an untimely-reimbursed travel advance and a non-
18 travel advance that is made and reimbursed in different reporting periods, the amount of the
19 advance outstanding at the end of the reporting period must be reported as a debt on Schedule
20 D if it exceeds \$500 or has been outstanding for more than 60 days. 11 C.F.R. § 104.11; *see*
21 *also* Advisory Opinions 2003-31 and 1992-1.

22 18. If the total amount reimbursed to the candidate is \$500 or less, the committee
23 must report the candidate as the payee; but if the total amount exceeds \$500 and payments to

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1 any one vendor used for the expenses total over \$200 for the election cycle, the committee
2 must report the candidate as the payee and report the payments aggregating over \$200 to any
3 one vendor as memo entries on Schedule B. See Advisory Opinion 1996-20, n .3.

4 19. In its 2004 October Quarterly Report, Schedule B, the Committee itemized
5 \$17,901.30 in disbursements to Stork. The Committee memo-entried the disbursements as
6 follows: \$418.85 for "Reimbursement--cell phone," \$2,193.09 for "Reimbursement-
7 computer," \$300 for "Reimbursement—field staff food," \$1,271.20 for "Reimbursement—
8 office supplies" and \$13,505.59 for "Reimbursement—travel," for a total of \$17,901.30. The
9 Committee had not previously disclosed the bulk of expenses to which these disbursements
10 related, and those that were disclosed were not properly reported as advances. As untimely-
11 reimbursed travel expenses and non-travel expenses, they should initially have been reported
12 as memo entries on Schedule A and also as debt on Schedule D.

13 Violations

14 V. 1. Respondents contend they acted in good faith and without intent or
15 knowledge that a violation would result. To avoid the costs and distractions of protracted
16 litigation, Respondents James R. Stork (in his capacity as an officer of both corporations and
17 as a federal candidate), Stork Investments, Inc. d/b/a "Stork's Bakery," Stork's Las Olas, Inc.,
18 Jim Stork for Congress and William C. Oldaker, in his official capacity as treasurer, will not
19 contest the finding of the Commission that they violated 2 U.S.C. § 441b. Respondents will
20 cease and desist from violating 2 U.S.C. § 441b.

21 2. Respondents Jim Stork for Congress and William C. Oldaker, in his
22 official capacity as treasurer, violated 2 U.S.C. 434(b) by failing to properly report certain in-

1 kind contributions in the form of advances from the candidate. and corresponding debt to the
2 candidate. Respondents will cease and desist from violating 2 U.S.C. § 434(b).

3 VI. Respondents will pay a civil penalty to the Federal Election Commission in the
4 amount of Thirty Thousand Dollars (\$30,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

5 **Other Provisions**

6 VII. Respondents Jim Stork for Congress and William C. Oldaker, in his official
7 capacity as treasurer, will amend the Committee's disclosure reports to comply with the Act
8 and the Commission's regulations relating to the reporting of receipt of in-kind contributions,
9 candidate advances, reimbursements paid to a candidate, and debt.

10 VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C.
11 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review
12 compliance with this agreement. If the Commission believes that this agreement or any
13 requirement thereof has been violated, it may institute a civil action for relief in the United
14 States District Court for the District of Columbia.

15 IX. This agreement shall become effective as of the date that all parties hereto have
16 executed same and the Commission has approved the entire agreement.

17 X. Respondents shall have no more than 30 days from the date this agreement
18 becomes effective to comply with and implement the requirements contained in this
19 agreement and to so notify the Commission.

20 XI. This Conciliation Agreement constitutes the entire agreement between the parties
21 on the matters raised herein, and no other statement, promise, or agreement, either written or
22 oral, made by either party or by agents of either party, that is not contained in this written
23

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2 agreement shall be enforceable.

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4 FOR THE COMMISSION:

5 Thomasenia P. Duncan
6 General Counsel

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8 BY:



9 Ann Marie Terzaken
10 Associate General Counsel
11 for Enforcement

10/31/08
Date

12 FOR THE RESPONDENTS:

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14 William C. Oldaker
15 Counsel to Respondents

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18

19 N. Bradley Litchfield
20 Counsel to Respondents

7-7-2008
Date

7-7-2008
Date

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